

In the Matter of Merchant Mariner's Document No. Z-760857-D1
Issued to: JAMES P. McLAUGHLIN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JAMES P. McLAUGHLIN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 22 May, 1952, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Merchant Mariner's Document No. Z-760857-D1 issued to James P. McLaughlin upon finding him guilty of misconduct based upon a specification alleging that while serving as Chief Cook on board the American SS OREMAR under authority of the document above described, on or about 10 May, 1952, while said vessel was at Puerto de Hierro, Venezuela, he did "wrongfully . . . strike the Chief Mate, M. P. Galusha, who was then and there in the performance of his duties." The Examiner found two other specifications "not proved"; and he found that Appellant did not "threaten" or "assault" the Chief Mate as was also alleged in the above specification.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of the Chief Mate and Third Mate before resting his case.

In defense, Appellant testified under oath in his own behalf. He stated that he had hit the Chief Mate "a glancing blow on the shoulder." (R.21)

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the above specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-760857-D1, and all other valid licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of twenty days from 20 May, 1952. A temporary document was issued to Appellant on 23 May, 1952.

From that order, this appeal has been taken, and it is urged that although Appellant did strike the Chief Mate, the charge should be dismissed because tempers were at a high pitch due to rough treatment of members of the crew by the Venezuelan soldiers or police; Appellant's conduct was not unusual for a merchant seaman; Appellant had been drinking beer ashore before the blow was struck; the incident was considered so trivial that it was not logged; and the "battery" is not supported by reliable, probative and substantial evidence.

APPEARANCES: Solomon Kaplan, Esquire, and Sol C. Berenholtz,
Baltimore, Maryland, of Counsel

Esquire, of

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 10 May, 1952, Appellant was serving as Chief Cook on board the American SS OREMAR and acting under authority of his Merchant Mariner's Document No. Z-760857-D1 while the ship was at Puerto de Hierro, Venezuela.

On this date, Appellant returned to the ship with other members of the crew. He had been drinking while ashore and was irritated by the local police or soldiers who had escorted the seamen back to the ship and then remained on the dock. The Chief Mate ordered Appellant off the deck so that the work of loading the vessel could be continued. Appellant obeyed the order reluctantly and the Chief Mate pushed Appellant along the passageway when he did not move fast enough. Just after the Chief Mate shoved Appellant into the Ordinary Seamen's forecastle, Appellant struck a blow which glanced off the Chief Mate's left arm and shoulder in the presence of other crew members. There was no further trouble and Appellant obeyed the Chief Mate's order to stay in the forecastle. There was no logging of this incident.

Appellant's prior disciplinary record during his six years at sea in the American Merchant Marine consists of a one month suspension on three months probation from 3 January, 1952, for being absent without leave and taking liquor aboard ship.

OPINION

The contentions presented in this appeal are entirely without merit. There is reliable, probative and substantial evidence that Appellant committed the serious breach of discipline of striking one of the ship's officers. Appellant admitted this by his own testimony. His drinking was no excuse. The Examiner saw fit to impose a comparatively light suspension because of the surrounding circumstances and the fact that the incident was not logged. The evidence discloses that there was no fight in the usual sense of the word; and the Examiner found that Appellant was guilty of no offense other than the single glancing blow which struck the Chief Mate. But this offense alone is considered to be more than ample to support the suspension imposed despite the extenuating circumstances. Therefore, I shall, in effect, sustain the order of the Examiner.

For the purpose of preventing a retroactive order and also to take into consideration the two day period between 20 May and 22 May, on which latter date the order was served on Appellant by the Examiner, the order is reworded as follows:

ORDER

That your Merchant Mariner's Document No. Z-760857-D1, and all other valid licenses, certificates of service and documents issued to James P. McLaughlin by the United States Coast Guard or its predecessor authority, are hereby suspended for a total period of eighteen (18) days to run during any period on and after 22 May, 1952, during which Appellant has neither Merchant Mariner's Document No. Z-760857-D1 nor any temporary document in his possession.

As so restated, the Examiner's Order is AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant